

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

RYDER WINEGAR,

Defendant.

* * * * *

No. 1:21-cr-00021-SM-1
1:20-mj-00229-AJ
January 28, 2021
9:25 a.m.

TRANSCRIPT OF DETENTION HEARING
HELD VIA VIDEOCONFERENCE
BEFORE THE HONORABLE ANDREA K. JOHNSTONE

APPEARANCES:

For the Government: AUSA Charles L. Rombeau
United States Attorney's Office

For the Defendant: Charles J. Keefe
Wilson Bush & Keefe PC

U.S. Probation: Karin Hess

Court Reporter: Brenda K. Hancock, RMR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1454

P R O C E E D I N G S

THE CLERK: This Court is now in session and has before it for consideration a continued detention hearing via videoconference in the matter of The United States versus Ryder Winegar, case number 20-mj-229-AJ.

Will counsel for the government and counsel for the defendant please identify themselves for the record.

MR. ROMBEAU: Hi. Good morning. Charles Rombeau for the government, your Honor.

MR. KEEFE: Good morning. Charles Keefe on behalf of Mr. Winegar, who appears by video from the Merrimack County Department of Corrections.

THE COURT: All right. Good morning, Counsel.

And good morning, Mr. Winegar, sir.

THE DEFENDANT: Good morning, your Honor.

THE COURT: Just as a preliminary matter, before we get started I want to be sure that everyone participating by video or telephone conference today understands that we have a local rule here in this District; it's Local Rule 83.8. That rule prohibits anyone who is participating remotely in this proceeding by video or telephone from recording, photographing, broadcasting or televising any of these proceedings. This prohibition applies to counsel, the parties, the media and any member of the public.

Mr. Winegar, before we get started today, I want to

1 talk with you about the manner in which we are conducting
2 today's proceeding. We are doing this by video. This is not
3 the way that we normally conduct detention hearings, and you
4 know that because we had our first detention hearing in person
5 or the beginning of this hearing in person, and that's your
6 right. You have the right to an in-person proceeding, and the
7 court is prepared to hold an in-person proceeding at the time
8 that it can be arranged, if that is your preference, because
9 it's your right.

10 But I understand that you have communicated and
11 consulted with your counsel, and I have some paperwork that
12 suggests that or indicates that you've consulted with counsel,
13 and, after doing so, that you now understand that you can waive
14 that right and that you can consent to proceed by video.

15 The document before me is entitled Consent to
16 Videoconference/Telephonic Conference and Waiver of Right to
17 Appear in Person, and the document notifies the Court that,
18 after consulting with your attorney, that you knowingly and
19 voluntarily consent to having your bail, bail review or bail
20 reconsideration hearings conducted by video or telephonic
21 conference, and that you knowingly and voluntarily waive your
22 right to be present in person, in open court as to those
23 proceedings. It's electronically signed, so I need to ask you
24 a couple of questions.

25 Do you, sir, waive your right to an in-person

1 proceeding?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: And do you consent to having this bail
4 hearing, a continuation of this bail hearing, conducted by
5 video?

6 THE DEFENDANT: I do consent, your Honor.

7 THE COURT: All right. And do you do that knowingly
8 and voluntarily, after consulting with Attorney Keefe?

9 THE DEFENDANT: Yes, that's correct, your Honor.

10 THE COURT: All right. And did you authorize Attorney
11 Keefe to sign this waiver and consent form that I have before
12 me?

13 THE DEFENDANT: Yes, I did authorize Mr. Keefe to --

14 THE COURT: All right. Very good. So, the Court
15 finds that Mr. Winegar, after consulting with Attorney Keefe,
16 has knowingly and voluntarily waived his right to be present in
17 person in open court for the continuation of this detention
18 hearing, and that he has knowingly and voluntarily consented to
19 proceed by video.

20 The Court notes that conducting today's proceeding by
21 video results in a partial limitation to the public's right to
22 access proceedings, in particular, the right to access an
23 in-court proceeding, and I have made individualized findings as
24 they relate to those partial limitations. I incorporate them
25 by reference, and they are also docketed.

1 Mr. Winegar, let me just remind you that you are not
2 required to make any statement in this matter; you do not need
3 to say anything to anyone; if you start to make a statement you
4 have the right to stop at any time; and anything that you say
5 may be used against you.

6 Do you understand those rights?

7 THE DEFENDANT: Yes, I do, your Honor.

8 THE COURT: All right. Very good. And you do have
9 the right to court-appointed counsel, if you qualify. The
10 Court understands that you have retained Attorney Keefe, and
11 that you do not wish court-appointed counsel. Is that correct?

12 THE DEFENDANT: That's correct, your Honor.

13 THE COURT: All right. Very good. So, Mr. Winegar,
14 there's one more thing that I need to review with you. When
15 you're present in person in open court you have your attorney
16 right next to you; you can ask the Court to step away so that
17 you can have a private confidential conversation; you can
18 sometimes meet before the Court appears privately and
19 confidentially; sometimes you can have conversations right next
20 to each other while you're sitting next to each other that are
21 private and confidential. This circumstance is a little
22 different, but you still have the ability to communicate
23 privately and confidentially with Attorney Keefe.

24 So, here's what you need to know: If at any point in
25 time in today's proceeding you would like to speak with

1 Attorney Keefe, you just need to let me know. Feel free to
2 interrupt me or anyone else who is speaking and say, Judge, I'd
3 like to communicate with my counsel; I need to talk with Chuck.
4 If that happens, we will pause this proceeding; my case manager
5 will open a virtual breakout room. You'll see an invitation to
6 join that room come up on your screen. If you're using a
7 tablet or an iPad you'll use your finger to join. If you have
8 a desktop or a laptop in front of you, you'll use your mouse
9 and you'll click to join. Attorney Keefe will do the exact
10 same thing. He'll be the only other person that gets that
11 invitation. The two of you will go into the breakout room.
12 You'll be able to see him, you'll be able to hear him. He will
13 be able to do the same with you. You'll speak privately and
14 confidentially, and when you're done you'll either elect to
15 leave the breakout room, or the breakout room can be closed,
16 and that will bring you back here. Okay?

17 THE DEFENDANT: Very good, your Honor.

18 THE COURT: All right. Very good. And you can do
19 that as many times as you would like.

20 THE DEFENDANT: Understood, your Honor.

21 THE COURT: All right. Very good.

22 Okay. So, Counsel, are we prepared to proceed?

23 MR. KEEFE: Yes, your Honor.

24 THE COURT: All right. So, I have received an
25 addendum to the Pretrial Services Report. I am not clear as to

1 whether, Attorney Rombeau, you would like to proceed, or
2 whether, Attorney Keefe, there are housekeeping matters that
3 you would like to address with the Court before I turn it over
4 to Attorney Rombeau.

5 MR. KEEFE: I can't think of any housekeeping matters.

6 THE COURT: All right. Then, I'm going to turn it
7 over to Attorney Rombeau and ask him to proceed, pick up where
8 we left off, please.

9 MR. ROMBEAU: Thank you, your Honor.

10 THE PROBATION OFFICER: Your Honor --

11 THE COURT: Yes.

12 THE PROBATION OFFICER: -- I just want to -- I'm sorry
13 to interrupt, but I just wanted to clarify just two matters in
14 the report that I sent that's dated January 26. I put that he
15 appeared for his detention hearing on January 14th, but it
16 should be corrected to be January 15th for the detention
17 hearing.

18 And then also in regards to the firearms that I listed
19 in my report, I sent all parties emails from the actual
20 individuals who provided me that information, and those have
21 the corrected listed -- or the individual firearms or property
22 that were the accurate property that was received. So, I just
23 wanted to make sure that that was put on record for the Court.

24 THE COURT: Okay. So, let me ask counsel this: Is
25 there any objection to the Court incorporating by reference, so

1 to speak, to Officer Hess's report the two emails that contain
2 an inventory or the receipt of what each of those individuals
3 has reported to Probation they have taken custody of in terms
4 of firearms and ammunition or any other weapons?

5 MR. ROMBEAU: Not from the government, your Honor.

6 MR. KEEFE: And, your Honor, I didn't know if that's
7 what the Court was alluding to. I was going to address what
8 Officer Hess just did, and I appreciate what she said. I think
9 the Court should know I sent two responses to Attorney Hess
10 about the addendum to the report, one late afternoon, early
11 evening last night and then one this morning. The corrections
12 she just made had to do with the one last night. The one this
13 morning was about finances and a line about travel. I will
14 address those substantively in my portion of the argument.

15 THE COURT: Thank you. That's fine. I don't have a
16 problem with that at all.

17 And thank you, Officer Hess, for raising those two
18 other issues.

19 So, Attorney Keefe, if I understand you correctly,
20 you're not objecting to having the Court incorporate by
21 reference the inventories or the receipts or the email
22 communications that Officer Hess received from the custodians
23 of the firearms?

24 MR. KEEFE: I am not, your Honor. I'm going to
25 address one of those situations, and there's someone here to

1 support an offer of proof, should it become necessary.

2 THE COURT: Okay. That's fine. That way at least
3 we're in agreement as to what the list is. We can talk about
4 the other pieces, and your witnesses may amend them, and that's
5 fine, too.

6 MR. KEEFE: Thank you.

7 THE COURT: All right. Okay.

8 All right. So, Attorney Rombeau, I am going to turn
9 it over to you, then, and I am also going to tell counsel that,
10 to the extent that it's helpful to you, I'm not going to object
11 to going over or referring to things that happened in the first
12 hearing. I don't expect this to be a redo, so to speak, but
13 it's understandable if there are some things that are repeated.
14 Okay? Thank you.

15 MR. ROMBEAU: Thank you, your Honor. The government
16 has had a chance to review the addendum to the Pretrial
17 Services Report and the correspondence from Attorney Keefe.

18 We continue to seek detention in this matter. Our
19 view has not changed from the original hearing before your
20 Honor nearly two weeks ago, and that is that the defendant both
21 presents a risk of flight and a danger to the safety of the
22 community were he to be released.

23 As I mentioned on the first day, this is not a
24 presumption case, so it is the government's burden by clear and
25 convincing evidence on the safety of the community and by a

1 preponderance of the evidence on the risk of flight, so we
2 embrace that it is our burden here.

3 I won't go through all the factors that we covered two
4 weeks ago, but I think the theme that has resonated with me as
5 we've reviewed these updates and the like is that there have
6 been, from our viewpoint, substantially there are omissions in
7 the first instance. Whether those are intentional or
8 inadvertent, they present a picture that is muddled, from our
9 standpoint.

10 Your Honor certainly recalls from two weeks ago the
11 issue with the firearms, that in the initial Pretrial Services
12 Report one firearm was disclosed, and only after presented with
13 information from the government that several additional
14 firearms had been located at the property in December were
15 those firearms later disclosed. Those are, as I understand it,
16 all accounted for now and are not in the home, but omissions,
17 in our viewpoint, material omissions of that nature, when a
18 defendant is seeking the Court's trust to be released, are
19 concerning.

20 And those have continued in a couple of other material
21 respects. One is the defendant's financial resources. The
22 initial explanation offered on site in December was that the
23 defendant had come into substantial funds and was flying to
24 Brazil to look at properties to purchase. We now know, based
25 on representations from counsel last night, that the defendant

1 and his family are living paycheck to paycheck. And I don't
2 know or, frankly, I don't know that -- defendant's financial
3 resources are not a material factor for the Court to consider,
4 but when there's an inconsistency of the picture that's
5 presented, that's what's of real concern to us; that we try to
6 make these decisions, and the Court tries to make these
7 decisions based on as complete information as possible and
8 truthful information, and when really diametrically opposed
9 information is provided, that's a problem.

10 The third, I'll call it, discrepancy that I want to
11 highlight here today is about some disclosures the defendant
12 made to Pretrial Services.

13 MR. KEEFE: I'm going to object, your Honor, and I
14 just cautionarily (ph) object.

15 If I could ask counsel for the government, is this
16 about the report you sent to Probation yesterday?

17 MR. ROMBEAU: It is, it is.

18 MR. KEEFE: I'm going to object to that and ask if we
19 can address it off the record for the Court to -- or at least
20 at the bench, for lack of a better phrase.

21 THE COURT: Yes.

22 MR. ROMBEAU: Happy to do that, your Honor.

23 THE COURT: All right. So, here's what I'd like to
24 do:

25 Brier, if you could please create a sidebar, so a

1 virtual room for myself, Attorney Rombeau and Attorney Keefe,
2 and we will address that at that juncture at sidebar.

3 THE CLERK: Absolutely.

4 THE COURT: Thank you.

5 THE CLERK: Just a quick question. Do you need the
6 court reporter in there as well?

7 THE COURT: Yes, I would like the court reporter in
8 there as well, please.

9 THE CLERK: Okay. Thank you.

10 MR. KEEFE: I misspoke when I said "off the record."
11 I meant at the bench, however we do that now.

12 THE COURT: I know what you mean. You mean not in the
13 full videoconference.

14 MR. KEEFE: Right.

15 (Sealed proceedings)

16 THE COURT: Okay. Thank you, Counsel. Let me just,
17 for the record, indicate that in the sidebar, which is sealed,
18 counsel and the Court discussed a matter, and, having concluded
19 the discussions, the parties were able to reach an agreement as
20 to how to proceed by proffer. It is a narrow proffer.

21 And, Attorney Rombeau, at the appropriate time you
22 should feel free to make it.

23 And I understand, Attorney Keefe, that you will be
24 responding to that proffer in the context of your presentation
25 to the Court.

1 So, Attorney Rombeau, you are muted, and we were just
2 before the breakout room hearing your additional argument. So,
3 I will turn it over to you, sir.

4 MR. ROMBEAU: Thank you, your Honor. I'll go into
5 that issue right now, and that is, we wanted to represent to
6 the Court that we obtained information that in June of 2017 the
7 defendant reported to a member of law enforcement that he had a
8 prior diagnosis of PTSD and had been in counseling since 2012.
9 And I bring that up only to contrast with information provided
10 to Probation Officer Hess at his interview a couple of weeks
11 ago, which is that there was no history of mental health either
12 diagnoses or treatment, and that was sort of at the end of
13 where I would say I think the third sort of, whether we call it
14 discrepancy or disconnect, where information was at least
15 inconsistent information. Whether these omissions or
16 discrepancies can be explained I leave to Attorney Keefe, but
17 when there's a pattern of them, that is what is of particular
18 concern to the government, and we would suggest that the three
19 sort of buckets that I've highlighted for the Court do
20 establish a pattern that there's been inconsistent information
21 from which the Court can rely in essentially taking the
22 defendant at his word.

23 I won't go into all the other 3142 factors that we
24 discussed at the prior hearing and will just rest on our prior
25 arguments on that point and conclude with the comment I made at

1 the first hearing, which is that I don't think this is a matter
2 we initially expected would be a detention hearing, but in
3 light of the flight to Brazil and the subsequent information
4 that has come to light, our view is that there are no
5 conditions of release or combination of conditions that will
6 reasonably assure both the appearance of the defendant as
7 required and the safety of the community, were the defendant to
8 be released. Thank you.

9 THE COURT: Thank you.

10 Attorney Keefe, I'm going to turn it over to you.

11 And then after Attorney Keefe's presentation, Attorney
12 Rombeau, you'll have another opportunity to respond.

13 Attorney Keefe.

14 MR. KEEFE: Thank you, your Honor. We want to
15 highlight again that this is not a presumption case, as the
16 Court often has to address, and the government bears a
17 significant burden in this regard, and the facts and
18 circumstances here not only simply don't support the
19 government's burden, they support release under the conditions
20 which we submit here, and those are additionally or
21 substantively electronic monitoring, which is what we discussed
22 previously, at the original detention hearing. Officer Hess
23 has informed that, if the Court does release Ryder to
24 electronic monitoring, he will need to obtain a cell phone. We
25 can have that done immediately; his wife will be able to do

1 that immediately.

2 Secondly, your Honor, as often happens in the real
3 world, when we were before the Court in the in-person detention
4 hearing we represented to the Court that Ryder and his wife had
5 their home on the market, there was a sale pending with a
6 closing date. Those of us who have bought and sold homes
7 understand that those things can often be in flux. Due to a
8 home inspection, that deal is not going to be happening. The
9 buyers made a counteroffer, Ryder and his wife are withdrawing
10 from that sale, and they are not going to be selling either
11 their home or either of their rental properties while this
12 matter is pending.

13 In that regard, your Honor, if the Court feels it
14 necessary, Mr. Winegar and his wife, who are the two joint
15 tenants on the deed of all three properties, would secure an
16 appearance bond by all three of the properties he and his wife
17 own, his residence in Amherst and the two rental properties in
18 Manchester.

19 So, those are the big chunks of our release plan in
20 addition to any other conditions the Court would impose upon
21 him, to include a mental-health evaluation, should the Court
22 feel it necessary, and comply with any treatment
23 recommendations.

24 Your Honor, today I'm going to address appearance, and
25 I'm not going to review everything that I've previously argued.

1 THE COURT: Okay.

2 MR. KEEFE: I know the Court has notes and a good
3 memory. But one thing that I was able to confirm and submitted
4 to Probation and the government was that Ryder had booked a
5 return flight at the time he had booked his flight. I know
6 that was an issue at the original detention hearing. I
7 received the Expedia booking that showed a return flight booked
8 at the time the departing flight was booked, and that return
9 flight was for January 18th, as well, and I highlight this,
10 because now it is -- the assessment of nonappearance in the
11 Probation report now suggests that the defendant's conduct
12 during arrest for the instant offense is a factor to consider
13 for risk of nonappearance.

14 I will remind the Court and highlight for the Court
15 again, when Mr. Winegar learned there was an arrest warrant he
16 found counsel, hired counsel, counsel engaged with the
17 government, and not only did he return voluntarily to the
18 United States through counsel; he informed the government of
19 the flight, airline, and number, airport and arrival time for
20 when he was coming back into the United States, and he
21 presented himself to be taken into custody. We have since as
22 well provided Probation with a copy of the visa that my client
23 obtained in 2019 for Brazil. So, he traveled to Brazil, an
24 interest in Brazil existed prior to this trip.

25 And I will address one thing. It was the

1 government's -- well, I'll address all of them, but now,
2 because it's relevant, the government suggested that they were
3 informed that Ryder and his wife had come into a significant
4 amount of money, and so he was in Brazil looking for property.
5 That's not what was represented. Prior to this event happening
6 Ryder and his wife, as you know, were selling, in the process
7 of selling their home, and the two of them were considering
8 moving to Brazil after the sale of that home. So, we factually
9 contest that representation. Trish Winegar is on here to
10 support an offer of proof.

11 Getting back to the risk of flight, your Honor, the
12 government, or I don't know if the Clerk's Office or it's the
13 government, one of them has my client's passport at this point.
14 I know that the Marshals provided it to the government. I
15 don't know if it's still in the government's possession or if
16 it is with the Court. My client's wife, Trish, she will
17 surrender her passport as well, if she hasn't already. The
18 children do not have passports.

19 And the children, your Honor, ultimately the number
20 one reason my client will not flee this matter is because he
21 misses his kids terribly and wants to get home to be with them
22 and take care of them. The Court may recall in the first
23 hearing he's a stay-at-home dad who also managed the rental
24 properties. He hasn't seen his kids for some time, and that is
25 the greatest weight and anchor that will tie him to the

1 jurisdiction during the pendency of this matter. As I
2 previously went over for the Court, he has many, many ties to
3 New Hampshire. He is from here, he grew up here, he went to
4 college here.

5 Regarding the family finances, your Honor, I sent an
6 email to Probation and the government this morning adding some
7 information, and I just don't think that the forms that
8 Probation used allow for the information that I provided, but
9 the financial section of the addended (ph) report suggests that
10 there's a positive monthly cash flow of \$4,650. We would
11 submit that there's actually roughly about \$1,000 a month, and
12 that the reason for the difference between the two is, although
13 monthly income reflects rental income from the two properties
14 in Manchester, it does not reflect any expenses, it doesn't
15 reflect the mortgages, and it doesn't reflect utilities as
16 well. So, those are significant numbers. As well, Trish has a
17 small loan she pays off every month, and that's about \$67 a
18 month. And on top of all that the couple has significant
19 credit card debt, and they take chunks of cash and try to pay
20 that down, and that leaves them with 1,000 to \$1,100 a month.
21 I don't want to air my client's finances in public --

22 THE COURT: That's all right.

23 MR. KEEFE: -- or on the record, but I wanted to add
24 that information for the Court, because he doesn't have the
25 resources to move or leave for any extended period of time,

1 especially considering his passport is now with the government
2 or the Court and he is proposing to be on electronic
3 monitoring.

4 I want to submit again for the Court regarding danger
5 he was not in Washington, D.C. on January 6th. There are no
6 allegations he was involved in that in any way. As well as the
7 allegations in the case, there were phone messages but no
8 evidence and no allegation, and my client will submit there
9 can't be, because he didn't do anything to actually do anything
10 more than leave phone messages.

11 For the guns and ammo and the vest, we disagree
12 vehemently with the government's representation that either my
13 client or his wife omitted anything, and we addressed that at
14 the time of the in-person hearing, and I know the Court
15 understands our position on that. Most importantly, all but
16 the 9 millimeter were removed from the house on December 24th.
17 After we had our in-person hearing, the 9 millimeter and the
18 ammunition related to that was removed from the house as well.
19 Those were all sent to a Peter Allen. The Court has an email
20 through Probation that documents that.

21 One thing that I would just add to that, and Mr. Allen
22 is here to support my offer of proof, is that I think the email
23 says everything was conveyed on December 24th, but, in
24 actuality, everything but the 9 millimeter and the 9 millimeter
25 ammunition were conveyed on December 24th. The rest was

1 conveyed over the holiday weekend after our detention hearing,
2 and Mr. Allen noted for Probation in that email that the AR-15
3 and the 9 millimeter were not functional.

4 I'll remind the Court that my client has no criminal
5 history, and that he is a veteran of the United States Navy,
6 who was honorably discharged.

7 In terms of the flow of this matter as it's gone
8 through the initial bail interview and several detention
9 hearings and status hearings we have had, Probation originally
10 recommended release, and then it was after the government
11 provided information about the firearms that law enforcement
12 had seen in the home did it change its position. In its report
13 recommending detention Probation used the word "dishonesty," my
14 client's dishonesty, and also said that the government's
15 evidence contradicted what he and his wife said. I think the
16 Court is clear on my position on that, they were asked what
17 guns were in the house, and they honestly answered that
18 question.

19 As well, your Honor, at that time Probation
20 recommended detention under the nonappearance section for two
21 reasons: lack of verifiable employment and ties to a foreign
22 country. Now they're saying that it's not lack of verifiable
23 employment but the offense charged and/or conduct during the
24 arrest. I just want to remind the Court that Probation was
25 aware of the offense charged at the time they did that first

1 report. Secondly, conduct during the arrest, Mr. Winegar could
2 not have done anything more to make it easy and safe for law
3 enforcement by telling them the airline, the flight, the flight
4 number, time and airport where he was going to arrive and
5 presenting himself to be arrested on the warrant. So, we
6 submit that factor does not support detention or a risk of
7 nonappearance.

8 As well, your Honor, under the danger to the community
9 or specific person, in that original report Probation noted the
10 nature of the offense and generally a safety concern for the
11 community or a specific person. Since that time Probation has
12 now added a history of weapons possession or use. All the guns
13 that were in the home were possessed legally. There is no
14 allegation not only in this case but anywhere that Mr. Winegar
15 did anything unlawfully used -- possessed the firearms, and
16 there's no allegation or evidence that he unlawfully used them
17 in any way, to threaten anyone, to point them at anyone.
18 Anything he did was lawful possession or lawful use.

19 Under the plan we propose, your Honor, electronic
20 monitoring and the appearance bond secured by the real estate,
21 we submit that that will address any appearance or safety to
22 the community concerns.

23 As well, your Honor, Mr. Winegar will abide by any and
24 all conditions the Court sets on him, whether that is a curfew,
25 counseling. He even suggested he would check in with Amherst,

1 PD, if required to do so. The government, we submit, has not
2 met its burden, but, more importantly, the evidence here in a
3 non-presumption case demonstrates that the Court can structure
4 a release plan that addresses any concerns it might have. And
5 the heart of the government's argument, your Honor, was that
6 there have been three omissions or three disconnects between
7 what Mr. Winegar has said and what Probation or law enforcement
8 has learned. I've previously addressed the firearm issue, I've
9 addressed the financial resources issue, the allegation that
10 someone told law enforcement he came into a large amount of
11 money.

12 The last thing I want to address is a representation
13 that the government discussed that Mr. Winegar told a law
14 enforcement officer back in 2017 that he had been diagnosed
15 with PTSD and had been in counseling since 2012. I'll just
16 note that that report was not taken at a Police Department. It
17 was a conversation that Mr. Winegar had with a police officer
18 at a town hall. The report was written the next day. And Mr.
19 Winegar submits that he's never been officially diagnosed with
20 PTSD. He said that informally to the officer, and, to the
21 extent that the officer represents that Mr. Winegar said he had
22 been in counseling, Mr. Winegar submits he's had one counseling
23 session in his entire life. He's never been diagnosed by
24 someone with PTSD. He's never been in counseling for a
25 repeated number of times. When he was asked by Probation, Do

1 you have any mental health problems or anything like that or
2 any prior counseling, he didn't even think of this, because it
3 was such a discrete incident in time.

4 But that all being said, Ryder is willing to, as part
5 of his release plan, have a mental health evaluation to address
6 any concerns of the Court. He's also willing to abide by any
7 other conditions the Court sets. So, to the extent the
8 government's suggesting there's a pattern of dishonesty or
9 omissions, we vehemently, vehemently disagree with that. What
10 we submit is happening is that the government takes whole or
11 partial information and then tries to use it as a
12 misrepresentation or an omission, and we object to that. We
13 don't think it supports the government's burden, and we would
14 ask the Court to adopt our proposed release conditions.

15 THE COURT: All right. So, I have a question for
16 counsel and possibly for Probation. I have not compared the
17 emailed weapons and ammunitions list to what was disclosed by
18 the government as the firearms and ammunition and weapons that
19 were observed and inventoried. Has anyone done that, and are
20 they all accounted for?

21 MR. KEEFE: I have, your Honor, and, Officer Hess,
22 please jump in, if you disagree, and counsel for the
23 government. Reviewing the email that was provided, there are
24 four firearms at issue. Mr. Allen documents he's received all
25 four firearms. He also documents ammunition, the load-bearing

1 equipment vest with pouches, as well as magazines. We submit
2 that everything is accounted for. I don't know if Probation or
3 the government has a disagreement with that, but that's our
4 position based upon the information provided.

5 THE COURT: Attorney Rombeau, have you done an
6 inventory check, and are you satisfied that all of the firearms
7 and weapons are accounted for?

8 MR. ROMBEAU: We are, your Honor, yes.

9 THE COURT: Okay.

10 MR. ROMBEAU: Your Honor, may I respond briefly?

11 THE COURT: Absolutely.

12 MR. ROMBEAU: I don't want to belabor this, we're two
13 hearings in on this, but something Attorney Keefe said that I
14 feel like I just can't let stand, and that is the statement
15 that Mr. Winegar doesn't have the resources to leave for an
16 extended period of time. That's what the statement was this
17 morning. We know that not to be true, because he left for an
18 extended period of time. But, based on the proffer offered
19 today for the first time, which is that he had a return date in
20 mind of January 19th, even taking that statement at face value,
21 that means the defendant booked a flight to Brazil, left within
22 24 hours Christmas week, planning to leave for a month, and
23 clearly had the resources to do it, because he did it. So,
24 this is not a matter of speculation, and this is not a matter
25 of getting into his finances or not. This is a matter of he

1 literally left the country and planned to be gone for a month.
2 I have not yet seen any documentation to suggest there was a
3 return date, and I have previously proffered to the Court that
4 the agents on site the day of the search warrant said that the
5 wife would not give a return date and said she did not know of
6 one. So, the idea that there is not a risk of flight because
7 there are not resources to flee is demonstrably false in this
8 case. This is a unique set of circumstances that we're faced
9 with here. But the idea that this travel was anything other
10 than, you know, an attempt to avoid consequences for this
11 action I think is awfully farfetched, when we look at the
12 surrounding circumstances, the stated financial challenges, the
13 fact that Mr. Winegar is a stay-at-home dad leaving Christmas
14 week for a month. None of that, frankly, passes the smell
15 test.

16 So, we're left with that there clearly are at least
17 sufficient resources to have allowed him to plan to flee the
18 country for 30 days, and to suggest otherwise I think is simply
19 at odds with what's happened here.

20 We'll rest on our remaining arguments about all the
21 other 3142 factors and leave it there for your Honor. Thank
22 you.

23 MR. KEEFE: Given that, your Honor, the government's
24 simply wrong. First of all, there was no warrant at the time
25 my client went. He had a pending sale of his home, and it was

1 the parties' intention -- not parties -- he and his wife's to
2 potentially move to Brazil. Things have drastically changed
3 since then. Their home is no longer for sale. He is now under
4 a criminal complaint here in the United States. And the
5 government -- I offered the government to provide them with an
6 email, if they wanted, the Expedia booking, we have that, that
7 when the flight was booked there was a return flight. I didn't
8 hear anything from them. As well, your Honor, an extended
9 period of time, when I said that, and maybe reasonable minds
10 can differ. If my client were to leave the country he
11 essentially could never come back unless he would be taken into
12 custody, and he could not enter many other countries that have
13 treaties with the United States to detain someone who is wanted
14 on a federal warrant by the United States Government. So, by
15 "extended period of time," what I suggested was he doesn't have
16 the ability to leave and stay gone. That's what I suggested.

17 This is an almost academic argument, because we're
18 proposing electronic monitoring as well as the personal -- the
19 real estate appearance bond, and the government has his the
20 passport.

21 THE COURT: All right. Attorney Rombeau, anything
22 further?

23 MR. ROMBEAU: Just, your Honor, I will confirm that
24 the government does have the passport. It was provided by the
25 U.S. Marshals at the in-person hearing, and, as I understood

1 it, the Clerk of Court would not take it yet because the matter
2 was still pending, but it is in the government's possession
3 pending your Honor's decision.

4 MR. KEEFE: And we obviously have no objection to
5 having that surrendered by agreement to the Court.

6 THE COURT: Okay. All right. So, Attorney Keefe, in
7 terms of your proposal to bond the three properties, what's the
8 total -- I didn't do the addition; I don't know if you have it
9 -- of the equity.

10 MR. KEEFE: The equity in the properties is -- I
11 thought I had that.

12 THE COURT: That's okay. I can add it later.

13 MR. KEEFE: His wife can address that, what the
14 total --

15 THE COURT: I think I have the numbers. I don't need
16 that. I just thought if you had it handy.

17 MR. KEEFE: I don't have that number handy, your
18 Honor. I apologize.

19 THE DEFENDANT: It's roughly \$300,000, your Honor.

20 THE COURT: Thank you, sir.

21 THE DEFENDANT: You're welcome, your Honor.

22 THE COURT: Okay. Attorney Rombeau, anything further?

23 MR. ROMBEAU: No, your Honor. Thank you.

24 THE COURT: All right. Thank you. I'm just reviewing
25 some notes. Bear with me, please.

1 (Pause)

2 THE COURT: All right. Attorney Keefe, you indicated
3 that you have the Expedia information, and my recollection was
4 that Ms. Winegar showed Capitol Police an American Express
5 entry of some kind that showed when the ticket to Brazil had
6 been purchased. Does your Expedia documentation show when that
7 ticket, both the departure and return flight, had been booked,
8 and are they on the same document, or are we talking about
9 multiple documents?

10 MR. KEEFE: Your Honor, I'm looking at an email from
11 Expedia, and it is one email. The email is Sunday, December
12 20th, and it says, Thank you, Ryder, your flights are booked,
13 and it has one whole travel itinerary for the flight to Brazil,
14 and then in the same itinerary in the same email in the same
15 document on its continuation from the landing in Brazil and
16 then has the return flight itinerary to return to Boston.

17 THE COURT: All right. And that email from Expedia is
18 dated December 20?

19 MR. KEEFE: Yes, your Honor.

20 THE COURT: Okay. And when was the purchase and sale
21 agreement signed for the Amherst property?

22 MR. KEEFE: To potentially sell it? That either Ryder
23 or Trish can specifically answer.

24 Ryder, do you know the date?

25 THE DEFENDANT: I don't know off the top of my head.

1 MR. KEEFE: Your Honor, if his wife Trish could
2 address that. She's on the Zoom.

3 THE COURT: Sure. I'd be happy to hear from her, if
4 she knows what the date was.

5 MR. KEEFE: Trish, what was the date of the P&S?
6 You're on mute. There you go.

7 MS. WINEGAR: Can you guys hear me?

8 MR. KEEFE: Yes.

9 MS. WINEGAR: I don't particularly know the date. I
10 can look it up, if you guys give me a little bit of time.

11 MR. KEEFE: Do you know roughly when it was while
12 you're looking it up?

13 (Pause)

14 MS. WINEGAR: Hello? I remember Ryder signed it on
15 the date of the hearing, so that's when the signing first
16 happened, before they changed the addendum.

17 THE COURT: All right. Thank you. Okay. That's
18 helpful.

19 Anything else, Attorney Rombeau?

20 MR. ROMBEAU: Your Honor, I know the Court keeps good
21 notes on this. I'll just note again for the record that
22 December 20th is the day that the Capitol Police knocked on his
23 door and announced their presence, and the defendant was aware,
24 certainly, of their existence.

25 THE COURT: Okay. All right. Very good. So, I'm

1 taking this matter under advisement. I am not issuing a ruling
2 from the bench today.

3 And in the interim, Mr. Winegar, you will continue to
4 be detained until the Court either orders conditions of release
5 ordering that you be released on conditions, or I issue a
6 ruling ordering that you be detained.

7 To the extent that either party determines that there
8 is something that comes to light that necessitates a reopening
9 or a further submission, please let the Court know while I have
10 it under advisement. I hope to issue a ruling very soon. All
11 right.

12 Attorney Keefe, anything further?

13 MR. KEEFE: Nothing further, your Honor. Thank you.

14 THE COURT: All right. Thank you very much.

15 Mr. Winegar, I want to stress to you how important and
16 carefully I am considering this matter. Your attorney has been
17 very thorough and very conscientious in his representation, and
18 I just need a few moments to reflect on all of the information
19 that's been provided. There's just been a lot that's come
20 quickly to the Court at the end of the day, there have been a
21 couple of things that have changed, and so I need to evaluate
22 all of the information so that I can issue my ruling, having
23 thought through everything very carefully. Okay, sir?

24 THE DEFENDANT: I understand, your Honor.

25 THE COURT: All right. Thank you so much.

1 All right. Thank you, everyone. I appreciate it.

2 MR. KEEFE: Thank you, your Honor.

3 THE COURT: Thank you very much. Have a good day.

4 MR. ROMBEAU: Thank you, your Honor.

5 MR. KEEFE: You too.

6 (WHEREUPON, the proceedings adjourned at 10:34 a.m.)

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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of the within proceedings.

Date: 8/14/21

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter